

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 24, 2003

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu
Absent: None
Staff: Heyden, Lindsay and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
September 10, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of September 10, 2003.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, announced that the Planning Commissioners will use electronic voting for public hearing items that are not on consent. He also noted that there will be "A Celebration of Milpitas Art in 2003" event on October 4th from 10 a.m. to 2 p.m. at the Milpitas Civic Center Plaza and admission is free. Also, volunteers are requested for the International walk to school day on Wednesday, October 8th.

Mr. Lindsay went on to say that a Town Hall meeting hosted by the CAC will be held on October 9th and topics include occupancy concerns for single-family homes and the Neighborhood Beautification Ordinance. Mr. Lindsay also noted that from October through December, Commissioner Hay and Chair Nitafan are regular members of the Planning Commission Subcommittee, and Vice Chair Williams is the alternate.

Commissioner Lalwani announced that Mayor Esteves father, Pastor Esteves, passed away last week and that services will be held on September 25th at 10 a.m. at St. Johns Church in Milpitas.

Commissioner Giordano asked if the Commission could adjourn the meeting in memory of Jon Minnis, a prominent businessman that made a great contribution to the City, who passed away last week.

On behalf of the Knights of Columbus, Chair Nitafan announced that there will be a drive to collect money for people with mental retardation from October 17th through October 19th, and encouraged everyone to be generous. All of the collected donations will be distributed to the local people in Milpitas and also to special education students at Milpitas High School.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

Mr. Lindsay noted the change to Agenda Item No. 1 ("S" Zone Amendment No. P-SA2002-111) and changed the permit title to read P-SA2003-111.

Commissioner Hay noted that the Fiscal Year 2003-2004 August monthly report was included in the Commissioners packet, and requested that this be agendized at the meeting under New Business.

Commissioner Giordano noted that appropriate staff members might not be available to respond to the questions and suggested agendizing the report to the October 8th meeting. Mr. Lindsay commented that he is available to respond to questions, and that if he doesn't have the answer, he could bring it back to the next meeting.

After further discussion, staff and the commission agreed to agendize the report to the next meeting.

Motion to approve the agenda and to agendize the FY 2003-2004 Capital Improvement Plan to the October 8, 2003 meeting.

M/S: Hay/Giordano

AYES: 7

NOES: 0

VII. CONSENT CALENDAR Item Nos. 3, 4, 5, 6, 7 and 8

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that Agenda Item No. 5 (Use Permit Amendment No. P-UA2003-14) does not reference the "S" Zone Approval Amendment discussed in the staff report. Therefore action taken will only be on the Use Permit. Mr. Lindsay also noted that for Agenda Item No. 7 (Administrative Permit No. P-AD2003-14; C.3 Stormwater Guidebook), the Commission received a memo that struck out some language from the C.3 Guidebook.

In regards to Agenda Item No. 5, Chair Nitafan asked if the "S" Zone Approval Amendment could be approved at staff level. Mr. Lindsay replied that it could be approved at staff level and noted that the information was also discussed in the staff report.

Vice Chair Williams suggested that Agenda Item No. 2 (Use Permit Amendment No. P-UA2003-18), be added to the consent calendar, since staff is on top of the six month review, and if there are any problems, the issues will come back in another six months.

Commissioner Giordano noted there is a letter from the applicant contesting the six-month review.

Regarding the construction of the enclosure, Mr. Lindsay commented that the situation between the landlord and the tenant seems to be progressing and that hopefully, the enclosure will be completed soon.

Mike Lee, Owner of Anh Hong Saigon, noted that since the landlord has committed to building the enclosure, he asked if he could be excluded from the six month review.

Commissioner Hay noted that the applicant is not in concurrence with staff and felt that the Item should be left off of consent.

Vice Chair Williams withdrew his previous request.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 3, 4 and 5**

Motion to close the public hearing on Consent Item Nos. 3, 4 and 5 and continue Item No. 6 to October 8, 2003 meeting.

M/S: Hay/Galang

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3, 4, 5, 6, 7 and 8, and to include the amended changes to Agenda Item Nos. 5 and 7.

***3 USE PERMIT AMENDMENT NO. P-UA2003-16:** Request to expand an existing grocery store (Manila Oriental Market) to 2,850 square feet and add 20 seats without providing six (6) required parking spaces at 179 W. Calaveras Blvd. (APN: 22-25-041) located in the (C2) General Commercial zoning district.

***4 USE PERMIT NO. P-UP2003-32:** A request to locate a 13-station internet cafe at 142 West Calaveras Boulevard (APN: 022-24-037) in the General Commercial (C-2) zoning district.

***5 USE PERMIT AMENDMENT NO. P-UA2003-14:** A request to expand the Banana Leaf restaurant into an adjacent 1,100 square foot tenant space, increase indoor seating from 104 to 168 seats and outdoor seating from 30 to 47 seats without adding providing seventeen (17) required parking spaces. The restaurant is located at 182 Ranch Drive-zoned C2, General Commercial (APN: 022-54-011).

***6 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-21:** Verification of compliance with all conditions of approval including maximum number of seats and ensuring trash bins are kept within the existing enclosures at 89 S. Park Victoria Drive (APN: 088-04-048). (Continued to October 8th)

***7 ADMINISTRATIVE PERMIT NO. P-AD2003-14 (C.3 STORMWATER GUIDEBOOK):** Approve Planning Commission Resolution No. 494 to adopt the City of Milpitas C3 Stormwater Guidebook to implement and apply the new C.3 urban runoff requirements to all relevant developments.

***8 ADMINISTRATIVE PERMIT NO. P-AD2003-15:** Request to allow after-market automotive part sales in the Highway Services (HS) zoning district located at 1503 North Milpitas Boulevard (APN: 022-02-045).

M/S: Hay/Giordano

AYES: 7

NOES: 0

VIII. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. “S” ZONE
AMENDMENT NO. P-
SA2002-111:** Request to
waive the roof equipment
screening requirement, and
review of revised landscape
plan, at 167 S. Main Street.
*Applicant: Ola Hassan.
Project*

Tambri Heyden, Acting Planning Neighborhood Services Director, presented a request to waive the roof equipment screening requirement, and review of landscape plan at 167 South Main street. Ms. Heyden noted that the temporary certificate of occupancy expires on October 18th, and that the applicant wants modifications and relief from some of the conditions. She noted that the project site is a cultural resource and that the Parks, Recreation, and Cultural Resources Commission (PRCRC), which approved to waive the screening requirement, reviewed the application.

Ms. Heyden recommended to the City Council approval with conditions for the waiver of the roof equipment screening requirement on the restaurant building, and approval of the revised landscape plan and revised screening requirements for their ground mounted A/C equipment screening with conditions based on the findings and special conditions noted in the staff report.

In regards to page 4 of the staff report, **Commissioner Galang** asked what “CMU” stands for. Ms. Heyden responded that “CMU” is an abbreviation for concrete masonry unit, or concrete block.

Commissioner Giordano asked why do certain projects go to the PRCRC and Ms. Heyden replied that it is a requirement from the Municipal Code.

Commissioner Giordano commented that the landscape plan should have been reviewed by the PRCRC. Mr. Lindsay noted that a city Cultural Resource can be a designated site or building. Modifications to a site of a designated building are not reviewed by the PRCRC. When a site designation is involved, then the PRCRC would have the authority to review site modifications such as landscaping.

Ms. Heyden added that if existing landscaping was listed as a cultural resource, then it would go to the PRCRC for review.

Commissioner Giordano asked what gives the PRCRC the ability to review building modifications. Ms. Heyden commented that the Municipal code reads that the PRCRC looks at modifications to buildings that are listed on the register of Cultural Resources.

In response to Chair Nitafan’s question regarding the grading plan, Ms. Heyden commented that the grading plan was submitted as part of the building permit (which was issued), and that the parking lot was constructed as per the building permit.

Chair Nitafan wants to ensure that the grading system doesn't flow into the adjacent property and Ms. Heyden replied that the grading would be evaluated with the development of the next parcel.

Commissioner Galang noted the two different projects at 167 and 187 Main Street and asked about the screening of the roof top equipment at 187 Main Street. Ms. Heyden explained that these two projects were approved as a package and staff is tying the loose ends of these two projects as one.

Commissioner Galang asked if 187 Main Street requires a Use Permit. Ms. Heyden explained that this project was included for documentation purposes, and that the roof top screening has been an unsatisfied condition of the coffee shop for a long time. Staff included this as part of the staff report so that the applicant knows he has to complete the screening at 187 Main Street to obtain a permanent certificate of occupancy.

Chair Nitafan invited the applicant to speak.

Ola Hassan, Applicant and Owner of 167 and 187 South Main Street, shared his frustration about his project that has been going on for the past 9 years. He felt that there has been much improvement in the Planning Department since Ms. Heyden came on board. He explained that all of the conditions staff is proposing were not part of the original approval. He complained that he has been cooperating with staff, and it seems that the City makes all of the decisions without consulting him first.

Mr. Hassan recalled that in 1998, he brought forward a landscaping plan to the Commission and it was agreed that a palm tree would be planted. He noted that the palm tree cost him \$3,500 dollars. He brought forward another revised landscaping plan and took it to the PRCRC and it was approved. He felt that it is very upsetting to go back and forth with staff and felt frustrated because it is costing him time and money.

In regards to the screening, he felt that this shouldn't be an issue. Mr. Hassan agrees with the condition to waive the roof equipment screening requirement but doesn't agree with the proposed landscaping plan from staff.

In regards to the screening for the ground mounted A/C unit, Mr. Hassan doesn't agree with staff to build a solid wall around the unit because ventilation is needed. Mr. Hassan would like to continue to work with staff to come up with a better plan because he is not able to afford all of these expensive costs to make improvements.

Commissioner Lalwani shares empathy with Mr. Hassan and asked him if staff gave him reasoning for the landscaping plan and the solid wall around the A/C unit. Mr. Hassan replied that staff recommended a solid wall but he used bamboo to screen the A/C unit and explained that the bamboo could last for twenty-five years.

Commissioner Lalwani asked what staff felt about the bamboo and Mr. Hassan replied that the bamboo should be able to work since it screens the A/C from the public.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close public hearing.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Commissioner Lalwani recalled that there was a similar situation with the Jain Temple, in which the applicant was asked to screen the roof top and the A/C unit and that the applicant was told they could screen it using the same color of the building. She asked if that same situation could be applied to the solid wall. Ms. Heyden explained that those were two separate issues. With the Jain Temple, the issue was the roof screening and with Ola's restaurant, it is screening for a ground mounted A/C unit that is visible from Serra Way.

Ms. Heyden asked the Commission to refer to the photos in their package that show the unit, which is about 3 feet high, 7 feet long and 3 feet deep. Ms. Heyden explained that when she met with the applicant, staff did a site inspection of the wrought iron fence and felt it was not acceptable. The following day, Mr. Hassan installed the bamboo, and when staff looked at the bamboo, the screening was not complimentary to the building. Ms. Heyden explained that staff is looking for something that is the same color and texture as the building. Regarding the ventilation, she suggested that the top of the solid wall could be open and vents could be inserted.

Commissioner Lalwani empathized with Mr. Hassan about the cost of the palm tree and asked if there are cheaper trees he could buy. Ms. Heyden explained that staff is not requesting palm trees to be planted, and that the only trees Mr. Hassan has is a palm tree. She went on to explain that staff is looking for an introduction of a different kind of tree that provides shade such as deciduous trees.

Ms. Heyden recalled that when this project was approved by the Planning Commission, a landscape plan was submitted but it was very minimal in terms of quantity of materials, and the condition that was approved was that additional landscape be provided and the landscape plan go back to the Planning Commission. Between that time and now, the landscape was never approved by the City. Staff has been trying to work with Mr. Hassan to take what he has already planted, and adapt it to meet staff's objectives. Staff has already accepted the palm trees by recognizing his exotic Caribbean theme.

Due to the applicant's financial constraints and dissatisfaction, Commissioner Lalwani asked if the landscaping plan and the screening for the A/C unit could be postponed so that it can be worked out between the applicant and staff.

Ms. Heyden explained that staff has been working very hard with Mr. Hassan for him to meet his October 18th temporary certificate of occupancy deadline. She explained that if he doesn't comply with the conditions by then, he has to shut down his operation.

Mr. Hassan commented that there wasn't anything on the west planter in 1996, and that when he came forward to the Planning Commission back then, the Chairman at that time asked him what he was going to do about landscaping, since there is no place to put landscaping there. Mr. Hassan said that it is his vision to make the restaurant look nice for the city and the community, but on the west side, there is nothing but concrete and you can't plant anything there. He felt that staff should be realistic and talk to him instead of just sending out inspectors to the restaurant without notifying him.

Chair Nitafan explained to Mr. Hassan that he had his chance to speak and now it is time to hear questions and concerns from the Commission.

Vice Chair Williams asked if staff ever discussed the possibility of using vinyl coated cyclone fence with appropriate color slats attached to the railing on the inside of the wrought iron fence, thereby providing a visual screening and adequate air circulation for the equipment. Ms. Heyden replied that vinyl slats were not considered by staff to be aesthetically pleasing, since the property is at the heart of Midtown and vinyl slats are used in industrial areas.

Vice Chair Williams mentioned his concerns about using a solid wall to screen the A/C unit since transients could hide there or throw trash behind the wall.

Commissioner Hay felt that staff made the right decision about waiving the roof equipment screening requirement. He recalled that when he saw the framing around the building, he tried to envision it and felt that the material would be too bulky and would detract from the historical nature of the building. Regarding screening of the A/C unit, he is aware of the requirements that the screening should be consistent with the building, and felt that the bamboo is out of place and detracts from the building. He reiterated that the restaurant is one of the major entrances to the midtown area.

Commissioner Hay mentioned the applicant's concerns about the planting on the western side of the property that is back against the vacant lot, and is concerned about what type of use would be built there in the future. He expects that that part of Midtown is zoned mixed use high density and would expect that something would go into that area for development. He asked staff if that has been taken into consideration for the landscaping plan. Ms. Heyden replied, "Yes", and that this property has a higher percentage of impervious areas, so the landscape area should be well designed

Chair Nitafan commented that landscaping might not be necessary on the western side if a building will be there in the future.

Ms. Heyden commented that it is more important to put landscaping on the western side, given the different variables of how that side could be laid out. She explained that the landscaping could be adjacent to a parking lot, another landscape area or even a building. There is so little landscaping to take advantage of so staff felt it to be critical.

As Commissioner Giordano listens to staff, the applicant and comments, she concurs with Commissioner Hay to not put the screening on the roof top equipment. She felt that the PRCRC should review modifications to the building, and would like them to review the ground mounted A/C equipment and the landscape plan due to the uniqueness of the property and its historical significance. Regarding the screening of the roof top equipment of the coffee shop, she felt that it should be addressed as a separate application.

Vice Chair Williams appreciated Commissioner Giordano's concerns to bring in the PRCRC to review the site modifications, but mentioned staff's concerns about a time limit for the temporary certificate of occupancy. He felt that bringing this project to another Commission that is not chartered to look at the landscaping would put the project in jeopardy.

Commissioner Hay agreed with Vice Chair Williams about moving forward to help Mr. Hassan meet his deadline, although, there is some question about whether the screening for the roof top at 187 South Main Street is part of this application. Ms. Heyden explained that there are two separate use permits for the restaurant and the coffee shop. She explained that the screening for the coffee shop was added to the staff report so that Mr. Hassan is aware of the condition.

Commissioner Hay asked if the conditions for the coffee shop have been met and Ms. Heyden replied that everything has been done except for the screening requirement.

Commissioner Sandhu agrees that the project needs to move forward and felt that the A/C unit screening is critical and staff should find material compatible for the building so it looks beautiful to everybody.

Ms. Heyden commented that instead of using the word "solid wall" in Condition No. 3, staff could revise the condition by saying "A CMU wall that is painted to match the color of the building, that meets ventilation requirements". She explained that the wall could be concrete but could have ventilation.

Commissioner Giordano explained her concerns that the Commission gives extensions all the time and doesn't see what the problem is with giving Mr. Hassan an extension, due to the uniqueness of the building. She felt that it is something that could be worked out at another level, not necessarily prolonging the project.

Chair Nitafan agreed to waive the roof top screening and felt that the screening for the A/C unit is give and take. He commented that staff recommends a lesser, massive type of wall that would cost less. He also mentioned that if there is a problem with the landscaping plan, maybe the applicant and staff could work it out and bring the landscaping plan back to the Planning Commission Subcommittee.

Ms. Heyden commented that in order to keep the project on track, it has been scheduled for City Council review on October 7th.

Vice Chair Williams asked if it is possible for the Subcommittee to meet at a special time besides the scheduled meetings and Ms. Heyden replied, "Yes".

Mr. Hassan complained that the landscaping plan shouldn't have come down to this moment, since he has submitted four plans to staff the past year. He felt that staff is very close to coming up with a solution.

Commissioner Lalwani recommended that staff remove the word "solid" from Condition No. 3, so that it allows the applicant to get creative with the screening requirements for his A/C unit.

Commissioner Galang commented that Mr. Hassan knows the A/C unit and the landscaping plan has to be complete but would support a 3 month extension for the applicant.

Commissioner Hay made a **Motion** for Part 1: To recommend to the City Council approval with conditions of waiver of roof equipment screening requirement and Part 2: Bring back the landscape plan to the Planning Commission subcommittee for approval and approval of ground-mounted A/C equipment screening with amended Condition No. 3 that reads as follows:

3. *Prior to the expiration of the temporary Certificate of Occupancy (October 18, 2003), the applicant shall replace the wrought iron fence on the north side of the building with a solid wall, CMU, masonry or a louvered screen to meet ventilation requirements, the same height as the equipment to screen the two ground-mounted A/C units and it shall be painted to match the building to the approval of the Planning staff.*

Commissioner Giordano asked if the roof top screening requirement for the coffee shop is included as part of the motion. Ms. Heyden commented that it should be removed from the motion.

Commissioner Hay commented that it is not part of the motion but it is still a requirement.

Mr. Hassan interrupted and said that when he started construction, the screening was not a requirement.

Commissioner Hay noted to Chair Nitafan that Mr. Hassan was out of order and that it is not a matter of debate for him anymore.

Commissioner Giordano commented that four plans have already been submitted to staff and felt that they were having difficulty making a joint decision. She felt that input from the PRCRC would shed some light on the plan, and would agree to a 3 month extension. She doesn't hold hope for a plan to come back to Subcommittee level and felt that staff and the applicant were not close to coming to a resolution.

Commissioner Lalwani asked if staff is removing the words "solid wall" from Condition No. 3. Ms. Heyden replied that the words "solid wall" need to be kept to have proof that a solid screening will meet ventilation requirements, if not, CMU or masonry of some type will be allowed for ventilation.

Commissioner Hay asked if the way the motion was stated, does it provide staff flexibility. He felt that the words "solid wall" does not provide staff the flexibility.

After further clarification from staff, Commissioner Hay amended the motion and condition no. 3 was modified to read the following:

3. *Prior to the expiration of the temporary Certificate of Occupancy (October 18, 2003), the applicant shall replace the wrought iron fence on the north side of the building with a solid wall, CMU, masonry or a louvered screen, the same height as the equipment to screen the two ground-mounted A/C units and it shall be painted to match the building to the approval of the Planning staff. If a solid type of screen does not meet ventilation requirements, an open type of CMU or masonry screen shall be provided.*

Part 1: **Motion** to recommend to the City Council approval with conditions of waiver of roof equipment screening requirement.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Part 2: **Motion** to bring back the landscape plan to the Planning Commission Subcommittee for approval and approval of ground-mounted A/C equipment screening with amended Condition No. 3 as stated above, based on the Findings and Special Conditions of Approval noted in the staff report.

M/S: Hay/Sandhu

AYES: 6

NOES: 1 (Giordano – For reasons stated above)

**2. USE PERMIT
AMENDMENT NO. P-**

UA2003-18: Second 6-month review for Anh Hong Saigon Restaurant to verify compliance with special conditions of approval associated with Use Permit Amendment No. P-UA2002-9. *Applicant: Anh Hong Saigon Restaurant.*

Chair Nitafan opened the public hearing on Agenda Item No. 2.

James Lindsay, Acting Planning Manager, presented a second 6-month review for Anh Hong Saigon Restaurant to verify compliance with special conditions of approval. He noted that a garbage enclosure was recommended as a special condition, and that it is critical to the operation of the restaurant. Staff felt that an additional six month review is being recommended to provide an extra level of security that the trash enclosure will be built for the restaurant.

Chair Nitafan invited the applicant to speak.

Mike Lee, Applicant and Owner of the restaurant, commented that he has no problem to extend the review for another six months. He expressed his frustration that this is his third time coming to the Planning Commission and explained that his original request was for an increase in seating, and that the condition for the trash enclosure was placed as part of the application. There were other items that were required that he has completed, but he has been having a rough time working with the landlord to have the trash enclosure built.

Mr. Lee informed that him, Troy Fujimoto, Acting Associate Planner, and other restaurant owners met with the landlord and that the landlord committed to building the trash enclosure. He felt that since the landlord has made a commitment, he should be excluded from the six month review, and that staff should deal with the landlord directly.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

Vice Chair Williams commented that in the number of years on the Commission, he has dealt with other projects that are part of the complex, from Mr. Chau's to the Thai restaurant, and there have always been issues with the property owner. He felt that it is unfair to hang the condition with the applicant, and is concerned with the same consistent issue with the property owner. The property owner has to perform the work, but the applicant is at the mercy of the property owner to resolve the issue. He is concerned with what the applicant is going through and asked staff how they can help out the applicant, even though he is being held responsible.

Mr. Lindsay noted that the property owner is constructing the garbage enclosure and that this condition affects a number of tenants. The applicants are seeking entitlements from the city and it is the applicants that are generating the waste that are needed to be disposed. He noted that the applicants play an important role to make sure that the condition gets met.

In regards to the ability to get commitments from the property owner, Mr. Lindsay commented that staff is working with the property owner to continue to get this to compliance. Staff will state to the property owner that having them appear before the Commission for future applications would be a valuable asset to them for continued business operations to the City.

Mr. Lindsay felt that the relationship between staff, the tenants and property owner is developing slowly. He explained that another alternative is that staff will not accept new applications for the facility until the issues are taken care of. That is another tact that is available for staff to use because of lack of compliance. He went on to say that for the next application that comes in, staff would do everything possible to have the property owner come forward with the tenant to address the issues.

Mr. Lee commented that gathering all of the tenants to meet seemed to work with the landlord and suggested that staff move along that line so that the landlord will feel compelled to show up.

In response to Chair Nitafan's concerns about a meeting, Mr. Lindsay commented that the meeting did occur and compliance took longer than expected. Staff will continue to make sure that this permit is moved along in a reasonable timeframe to get the enclosure built. He explained that the landlord has submitted an application and plans and staff will bring the parties together again if action has not been taken.

Commissioner Hay commented that absent a Use Permit application, there is really nothing to motivate the property owner to do the things that have been suggested. Even if they made a commitment, it doesn't mean anything. He felt that staff is on the right approach and if it doesn't resolve itself through this particular process, staff should seriously consider advising the property owner that no further applications would be accepted until this matter is addressed so that a future applicant doesn't spend time and money to open up a new business, and then find out that they have a problem with the landlord that is going to impact their application.

Commissioner Lalwani recalled that the Tofu House applicants had a similar problem with the landlord and asked if the City has any legal recourse against landlords that are not complying.

Mr. Lindsay commented that the responsibility is on the applicant to have the construction done. He went on to say that if the site was out of compliance with an approved site plan or if the trash enclosure was part of the approved site plan, then the City could issue a citation to the landlord. He commented that the number of new restaurant tenants at this center is creating a demand to have the enclosure built.

Mr. Lee shared his frustration that every time a review comes up, he has to pay for staffs time to write a reports and he also has to pay for mailing public notices. He asked if the Commission could waive his fees.

Commissioner Giordano noted if the public hearing is kept open, then Mr. Lee does not have to readvertise. Mr. Lindsay confirmed that that is correct.

Motion to reopen the public hearing and extend the six-month review for another six months.

M/S: Hay/Giordano

AYES: 7

NOES: 0

**IX.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:48 p.m. to the next regular meeting of October 8, 2003 in memory and dedication of Jon Minnis.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary